

**5452.249**

an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

[66 FR 27474, May 17, 2001]

**5452.249 Allocation.**

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

**ALLOCATION (DFSC 1995) (DEVIATION) (9F01)**

(a) *Reduced Supplies.* If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) *Additional Supplies.* If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) *Reduced Deliveries.* If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) and (b) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the pro rata amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100% of the quantity specified in the Schedule.

(End of clause)

[60 FR 21992, May 4, 1995]

**48 CFR Ch. 54 (10-1-11 Edition)**